IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6001 OF 1996

1. Woollen Kamgar Sanghatana
having its office at
c/o. Kashtakari Yuvak Sangathana
Saki Naka Pipe Line, Sakinaka
Andheri (E), MUMBAI

2. Sushma Sharad Vartak
residing at Keshav Patil Chawl
Jalgaon Wadi, Manvelpada, Virar
Thane

3. Bansidhar R. Vishwakarma
residing at Room No.25,
Keshav Nagar, Near Vaishali Nagar
Ghartanpada, Dahisar (E)
Thane ... Petitioners

V/s.

1. Seth Industries Ltd.
having its factory at
Simplex Mills Compound, Dahisar (E)
Mumbai

2. Seth Textiles
(deleted)

3. Shri K.D. Kochargaonkar
Member, Industrial Court, Thane

4. State of Maharashtra
through the Secretary of
Textile Minisry, Mantralaya
Mumbai ... Respondents

Ms.Gayatri Singh for Petitioners
Mr.O.S. Kutty for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 19, 2004**

ORAL JUDGMENT:

. The dispute in this petition pertains to whether an unrecognised union in the Woollen Textile Industry can file a complaint under Item 9 of Schedule IV of the

MRTU & PULP Act claiming wages for workmen who they represent. The Industrial Court has dismissed the complaint on the basis of the judgment of the Supreme Court in **Shramik Utkarsh Sabha v/s. Raymond Woollen Mills Ltd. & Ors., 1995 I CLR 607.** The Industrial Court has held that no other union but the representative union under the Bombay Industrial Relations Act (for short, 'BIR Act') or a recognised union under the MRTU & PULP Act can file a complaint claiming wages on behalf of the workmen employed in the Woollen Industry under Item 9 of Schedule IV of the MRTU & PULP Act.

2. It appears that in April 1986, respondent No.1 i.e., Seth Industries Limited, and Respondent No.2 i.e., Seth Textiles (against whom the Writ Petition has been dismissed on 12.3.2001 and no steps have been taken to get it restored) stopped providing work to the employees and did not pay the monthly wages. A complaint was filed in 1986 by the Woollen Mill Kamgar Union, a trade union representing the workmen at that point of time against Seth Textiles regarding non-payment of wages from the month of May 1986 onwards. The Complaint was allowed by the Industrial Court, declaring that the Company had committed an unfair labour practice. It is not clear from the material before me whether a similar complaint was filed against Seth Industries.

3. In 1987, Respondent No.1 filed a Reference under the Sick Industrial Companies (Special Provisions) Act, 1985 before the Board for Industrial and Financial Reconstruction (BIFR). It has been declared a sick unit on 6.10.1987. It appears that Canara Bank has filed Suit No.3635 of 1988 against Respondent No.1. On 25.5.1990, an order was passed by the BIFR for applying to High Court for winding up of the company. The respondent-company approached the AAIFR in appeal. The AAIFR has rejected the appeal and the order of the BIFR has been confirmed from 22.6.1992. Aggrieved by this order, Respondent No.1 has filed a Writ Petition before the Delhi High Court and obtained an ad-interim order staying the operation of the order and findings of the BIFR.

4. It appears that in May 1991, a majority of the employees of Respondent No.1 became members of the Petitioner-Union. The Petitioner-Union then filed a complaint being Complaint (ULP) No.196 of 1992 under Item 9 of Schedule IV of the MRTU & PULP Act for payment of wages for the period from 1986 onwards to the tune of Rs.126,63,27,759/-. Ad-interim orders were passed directing the respondent to pay wages for a certain period. The complaint has been dismissed since the Industrial Court was of the view that the complaint filed by an unrecognised and a non-representative union was not maintainable. He has held so in view of the

judgment of the Supreme Court in the case of **Shramik Utkarsh Sabha (supra)**. The Industrial Court observed that Kamgar Utkarsh Sabha was the Representative Union for the Woollen Industry and, therefore, only that Union could represent the workmen in a complaint filed under the MRTU & PULP Act.

5. Ms.Singh, learned Advocate for the Petitioners, takes exception to this finding of the Industrial Court and submits that a proper reading of the judgment of the Supreme Court in **Shramik Utkarsh Sabha** (supra) would indicate that a complaint can be filed by a non-representative and unrecognised union under Item 9 of Schedule IV of the MRTU & PULP Act under certain circumstances. She submits this is especially so when there is no recognised or representative union disputing the claim made by the unrecognised union or there is no adversarial approach between the two unions. She submits that in the present case, the representative union has not bothered to take up cudgels for the workman. According to the learned Advocate, the representative union did not have any membership in the respondent concern since all the workmen in the respondent concern had become members of the Petitioner. The learned Advocate sought to distinguish the case before the Supreme Court by submitting that the facts in that case were dissimilar to the facts before me. She urges that Apex Court had delivered the judgment in

Shramik Utkarsha Sabha (supra) because the non-representative union or unrecognised union was seeking to oust the recognised union from the fray by claiming to represent the workmen. According to her, in the present case, there being only one union, there was no need for the complaint to be dismissed.

6. Mr.Kutty, learned Counsel for the Respondent, submits that the judgment in **Shramik Utkarsh Sabha** (supra) is a complete answer to the issue raised before the Industrial Court and no allowance whatsoever has been made for an unrecognised or non-representative union filing a complaint. According to him, since there is a representative union for the Industry, the Industry being covered by the provisions of the BIR Act, only the Kamgar Utkarsh Sabha which is the representative union under the BIR Act can file a complaint under the MRTU & PULP Act.

7. This vexed issue as to whether only a representative union under the Bombay Industrial Relations Act can file a complaint under the MRTU & PULP Act has been considered in various judgments of this Court after the judgment in **Shramik Utkarsh Sabha (supra)** was delivered by the Apex Court. In the case of **Shramik Utkarsh Sabha** (supra), the Supreme Court has posed the following issue for consideration:

> 3. The question for consideration in this appeal is: does a representative union under the Bombay Industrial Relations Act, 1946 (BIR Act) have the exclusive right to represent the employees of the concerned industry in complaints relating to unfair labour practices under the Maharashtra Recognition of Trade Unions And Prevention of Unfair Labour Practices
>
> Act, 1971 (MRTU & PULP Act) other than those specified in items 2 and 6 of Schedule IV thereof?

8. The facts in that case were that the Mill filed a complaint under Items 5 and 6 of Schedule III of the MRTU & PULP Act against the workmen represented by Kamgar Utkarsh Sabha, which was the representative union under the BIR Act. The Kamgar Utkarsh Sabha appeared and represented the workmen before the Industrial Court. After some ad-interim orders were passed and were made absolute after hearing the representative union, Shramik Utkarsh Sabha, which was the non-representative union, made an application for impleadment in the complaint. This application was based on the ground that the employees had sought its membership and that the complaint had been filed in collusion with Respondent No.2 Union, that is, the representative union. The application was dismissed and thereafter the order of the Industrial Court was challenged in this Court. The Division Bench of this Court held that only the representative union could represent the workman before the Industrial Court in the complaint filed by the employer. The Supreme Court has confirmed the judgment

of this Court after taking into consideration the provisions of the BIR Act and the MRTU & PULP Act. The Supreme Court has considered that the BIR Act debars a non-representative union from representing the workman for any dispute other than in respect of dismissal, discharge, etc. The Supreme Court has then held thus:

> 14. Section 21 of the M.R.T.U. and P.U.L.P. Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which the provisions of the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in items 2 and 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to which the B.I.R. Act applies. Apart therefrom, the section permits an employee, not an union other than the recognised union, to so appear. The provisions of section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in proceedings relating to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV.

9. According to the Supreme Court, therefore, no other union but a representative union can appear in proceedings relating to unfair labour practice other than those specified in Items 2 and 6 of Schedule IV of the MRTU & PULP Act. The rationale is that it is in the interest of industrial peace that the employer should have to deal with only one union, which is the representative union.

10. While interpreting this judgment, two learned single Judges of this Court have considered the same and held that an individual workman has a right to ventilate his grievance as long as the complaint is not filed under Items 2 and 6 of Schedule IV. In the case of **Rama Bala Kate & Ors. v/s.Walchandnagar Industries Ltd. & Ors., 1996 II CLR 713 (BOM),** the learned Single Judge of this Court (Srikrishna, J.) held thus:

> 4. .....It is true that in the judgment in Raymond Woollen Mill case (supra) the Supreme Court has held that the provisions of Section 21, of the Act did not lead to the conclusion that a union other than a representative union can appear in proceedings relating to all unfair labour practices, other than those specified in Items 2 and 6 of Schedule IV of the Act. in the entire judgment of the Supreme Court nothing has been said to the effect that the concerned employees, directly affected, could not maintain such a complaint. In any case, the provisions of Section 28, of the Act are clear and they give to the affected employees the right of moving the complaint against the employer. Such right can only be taken away by an express provision in the Act. There is no such provision in the Act. In these circumstances, I am unable to accept the contention of Mr.Ramaswami that the complainants by the employees affected invoking the provisions of Items 5 and 9 of Schedule IV of the Act were not maintainable. I, therefore, overrule the preliminary contention urged by the respondents as to the maintainability of the complaints and the writ petition.

11. In case of **Bhajirao Rajaram Patil v/s. Maharashtra State Co-operative Bank Ltd. & Anr., 1996 II CLR 1137**, the learned Single Judge of this Court (Lodha, J.) has considered the judgment of the Apex

Court and held thus:

> 16. A plain reading of sub-secion (1) of Section 28 would show that any union or any employee or any employer or any Investigating Officer aggrieved by act of any person who is engaged in or is engaging in any unfair labour practice may file a complaint within 90 days of occurrence of such unfair labour practice before the competent Court. Section 28 of course has to be read with other provisions of M.R.T.U. and P.U.L.P. Act including Sections 20 and 21, it is clear that any affected employee in an undertaking to which Industrial Disputes Act applies or in an undertaking to which Bombay Industrial Relations Act, as the case may be may file complaint aggrieved by an unfair labour practice and it cannot be said that such complaint has to be filed by a recognised union or representative union. As already indicated above, in the present case the employee belongs to an undertaking to which Bombay Industrial Relations Act applies and he has challenged his transfer order whereby he has been transferred by the employer from Nasik to Bombay and according to the employee such transfer order is unfair labour practice under Items 3 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Obviously and, apparently such complaint is not covered by Section 21(2) of the Act and, therefore, there being no other bar under M.R.T.U. and P.U.L.P. Act in filing such complaint by an affected employee, it cannot be said that such complaint was not maintainable having not been filed by representative union. How can an order of transfer of any individual employee affect the general employees of an industrial establishment. Besides that when M.R.T.U. and P.U.L.P. Act does not put any embargo in filing complaint by affected employee challenging his transfer, such right cannot be taken away or restricted by holding that it has to be espoused by recognised or representative union. Such proposition would definitely tantamount in distorting Section 28, which in my view is not permissible. The argument of the learned counsel for Respondent No.1 that any individual dispute save dismissal, discharge, removal and retrenchment has to be espoused by recognised union is not supported by any of the provisions of the M.R.T.U. and P.U.L.P. act or the provisions of the Bombay Industrial Relations Act.

12. The Division Bench of this Court in the case of **Warden & Co. (India) Ltd. v. Akhil Maharashtra Kamgar Union, 2001 II CLR 359** after considering the judgments in **Shramik Utkarsh Sabha (supra)** and **Rama Bala Kate** and other judgments of this Court, has concluded that in the case of Industries covered by the Industrial Disputes Act, an unrecognised union can file a complaint in relation to unfair labour practices other than those which arise under Items 2 and 6 Schedule IV of the MRTU & PULP Act.

13. Reference may be made to section 28 of the MRTU & PULP Act. Complaints alleging unfair labour prctices are dealt with under section 28. Section 28 stipulates that when any person has engaged in or is engaged in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice file a complaint before the Court competent to deal with the complaint. Section 28 does not make any distinction to the union being representative or the recognised nor does it exclusively deal with the industries governed by the Industrial Disputes Act and not by the BIR Act. The Investigating Officer has also been empowered to file a complaint under section 28 irrespective of whether the industry is governed by the BIR Act or the Industrial Disputes Act. In these

circumstances, it is difficult to accept the submission of the learned advocate for the respondents that only a representative union or a recognised union can file a complaint under the MRTU & PULP Act irrespective of whether it is filed under Items 2 and 6 of Schedule IV. Section 21 which deals with the right to appear or act in proceedings relating to certain unfair labour practices stipulates that no employee in any industry to which the provisions of the BIR Act apply shall be allowed to appear or act or shall be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of the act except through the representative union entitled to appear under section 30 of the BIR Act. However, this exclusive right of a representative union which is well known under the BIR Act is only mentioned in section 21 of the MRTU & PULP Act. Significantly, Item 2 of Schedule IV relates to abolishment of work of a regular nature by giving the same work to contractors in order to break a strike. Item 6 is in respect of employment of badlis, casuals or temporaries for years together in order to deprive them of the status and privileges of permanent workmen. This is obviously because Schedule II of the MRTU & PULP Act which deals with unfair labour practices on the part of an employer qua a trade union is not confined to actions of the employer against a recognised union under the MRTU & PULP Act or a representative union under the BIR Act. The unfair

labour practices enumerated in Schedule II are, for example, to interfere with, restrain or coerce employees in exercise of their right to organise, form, join or assist a trade union. This right to file a complaint is not granted to an employee only if he is assisting or joining a representative union. The representative union in an industry may exist and an unrecognised union may want to step in and mobilise the workmen. While exercising its legitimate rights as a trade union, its members may have to contend with unfair labour practices stipulated in Items 1 to 4 of Schedule II of the MRTU & PULP Act. Can it be said that such a Union and its members can have no recourse to law? The Legislature having recognised this, has stipulated that restraint by the employer in the exercise of a right to organise a trade union is also an unfair labour practice. The terms ‘organising’ or ‘forming’ a trade union are not qualified by the expression representative union. Items 1 to 4 and 6 of Schedule II obviously, therefore, deal with the rights of both the representative as well as the unrepresentative union. It is only Item 5 which stipulates that the employer would commit an unfair labour practice if he refused to bargain collectively in good faith with the recognised union. Therefore, in my view, a trade union which files a complaint under Item 9 of Schedule IV is not debarred from filing the same provided no representative union is agitating the same cause.

14. Section 27A of the BIR Act stipulates that no employee is entitled to be represented in any proceedings under the BIR Act by any union other than the representative union except in the proceedings under section 32, 33 and 33A. Section 30 lists the representatives of the employees in order of preference. The Representative Union is the preferred union to act as a representative of the employees. Section 33A deals with the rights of the persons who may appear in proceedings in which there is a dispute between the employees and employees. If such a dispute is referred for adjudication before the Labour Court or the Industrial Court, all parties to the dispute are entitled to and appear before the Court. The representative union which desires to be heard in respect of such a dispute may also be heard by the Court. Section 33 of the Act specifies that an employee or a representative union shall be entitled to appear through any person in all proceedings before the Industrial Court or the Wage Board or in the proceedings before the Labour Court deciding whether a lockout, closure or stoppage or change or an order passed by employer under the standing orders is illegal. However, when a Representative Union has already entered its appearance, an individual employee is not permitted to appear except in proceedings where he challenges the termination of his services or suspension. Any other

person may appear for an individual employee in any proceeding before the Court with the permission of the Court. "Person" in my view would include any other trade union. In the case of *Girja Shanker Kashi am v/s. The Gujarat Spinning & Weaving Co. Ltd.,* **1962 (4) FLR 253**, the Supreme Court has observed thus:

> "The result therefore of taking Ss.27-A, 32 and 33 together is that S.27-A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in Ss.32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power to the authorities under Act to permit an employee himself to appear even though a representative of employees may have appeared but this permission cannot be granted where the representative union has appeared as representative of employees. Section 33 which is the other exception allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear therefore, that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance the proceedings might have begun under S.42(4). But where the appearance is by any representative of employees other than a Representative Union authorities under S.32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in S.33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceedings under the Act and the representation must be confined only to the Representative Union. <u>The complete ban therefore laid by S.27A on representation otherwise than through a</u>

> representative of employees remains complete where the representative of employees is the Representative Union that has appeared; but if the representative of employees that has appeared is other than the Representative Union Ss.32 and 33 provide for exceptions with which we have already dealt. There can therefore, be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee under S.42(4) of the Act, the Representative Union alone can represent the employee cannot appear or act in such proceeding." (Emphasis supplied).

The Apex Court has reiterated this view in *Sri Santuram Khudai v/s.K.Printers & Processors (P) Ltd.,* **AIR 1978 SC 202** by observing thus:

> "Now a combined reading of sections 80, 27-A, 30, 32 and 33 of the Act leaves no room for doubt that consistent with its avowed policy of preventing the exploitation of the workers and augmenting their bargaining power, the legislature has clothed the representative union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in the proceeding under the Act where the representative union enters appearance or acts as representative of employees....(Emphasis supplied)

15. Therefore, it is only when the representative union has appeared as the representative of the employees that any other union is debarred from appearing in the proceedings. The Apex Court while dealing with the submission made by the employer in **Shramik Utkarsh Sabha** (supra) was concerned with a situation where two unions, the representative as well as the non-representative union, were contesting the

complaint. The non-representative union wanted to be impleaded as a party when the representative union was already representing the employees. It is in these circumstances that the Apex Court held that the provisions of section 21 do not lead to the conclusion that a union other than the representative union can appear in proceedings relating to all unfair labour practices other than those specified in Items 2 and 6 of Schedule IV.

16. Both the MRTU & PULP Act under which the complaint has been filed and the BIR Act which is applicable to the industry do not place an embargo on a non-representative union filing a complaint unless there is already a representative union which has filed one in respect of the same cause of action. In the present case, undisputedly, there is no representative union at all representing the cause of the workers. No complaint has been filed by the representative union claiming the wages payable from 1986 onwards. In such circumstances, when the representative union does not exercise its rights in furtherance of the claim of the workmen, it is difficult to accept the submission of Mr.Kutty that no other union can file such a complaint even if it is not a complaint filed under Items 2 and 6 of Schedule IV of the MRTU & PULP Act. In any event, as held in the cases of **Rama Bala Kate** (supra) and **Bhajirao Rajaram Patil** (supra), an individual workman could have filed a

complaint under Item 9 of Schedule IV. The Petitioner-union was merely representing the workmen as an agent. Therefore, there was no adversarial position between the representative union and the Petitioners. In such circumstances, it would, therefore, be difficult to hold that the non-representative union can not file a complaint on behalf of all the workers claiming wages under Item 9 of Schedule IV especially when the representative union which has exclusive right of appearance as stipulated under section 27A of the BIR Act does not enter an appearance.

17. As held by the Supreme Court, the BIR Act gave the status to a representative union to exclusively bargain for the rights of the workmen employed in a concern. In the present case, the Petitioners were not seeking to exercise such a right but were only claiming wages which were payable to the workmen. Therefore, the rights of a trade union to represent the workmen before the Industrial Court under Item 9 of Schedule IV in a complaint under the provisions of the MRTU & PULP Act cannot be taken away unless the representative union chooses to enter an appearance. When the litigation filed is to secure certain benefits for the employees like wage adjudication, permanency, abolition of regular nature of work being done by employing contract workers, etc. the representative union or recognised union would alone have a right to agitate these grievances. When

the dues claimed are in respect of non-payment of earned wages, a non-representative union certainly would have a right to represent the employees as their agent. Reliance is placed by Ms.Singh on the case of **Mumbai Kamgar Sabha v/s. Abdulbhai Faizullabhai & Ors., (1976) 3 SCC 832** to contend that the Petitioner is only acting as an agent for and on behalf of the workman concerned claiming unpaid wages. The Supreme Court in that case has observed thus:

> 9. Organised labour, inevitably involves unionisation. Welfare of workers being a primary concern of our Constitution (Part IV), we have to understand and interpret the new norms of procedure at the prelitigative and litigative stages, conceptually recognising the representative capacity of labour unions. Of course, complications may arise where inter-union rivalries and kilkenny cat competitions impair the peace and solidarity of the working class. It is admitted,in this case, that there is only one union and so we are not called upon to visulaize the difficult situations Counsel for the respondents invited us to do, where a plurality of unions pollute workers' unity and create situations calling for investigation into the representative credentials of the party appearing before the tribunal or court. It is enough, on the facts of this case, for us to take the union as an abbreviation for the totality of workmen involved in the dispute, a convenient label which for reasons of expediency, coverts a lengthy party array into a short and meaningful one, group representation through unions being familiar in collective bargaining and later litigation. We do not expect the rigid insistence on each workman having to be a party *eo nomine.* The whole body of workers, without their names being set out, is, in any case, sufficient, according to the Counsel for the respondents, although strictly speaking, even there an amount of vagueness exists. For these reasons, we decline to frustrate this appeal by acceptance of a subversive technicality. We

> regard this appeal as one by the workmen compendiously projected and impleaded through the union.

Therefore, in my view, the Industrial Court was not right in dismissing the complaint. The judgment in *Shramik Utkarsha Sabha (supra)* will have to be read in context of the facts in that case where the non-representative and unrecognised union was seeking impleadment in a complaint in which the representative union was arrayed as a respondent to the complaint.

18. Rule made absolute. Complaint restored to file.

19. Parties to act on an authenticated copy of this order.